

Order

Michigan Supreme Court
Lansing, Michigan

June 20, 2007

Clifford W. Taylor,
Chief Justice

131902 & (17) (18)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 131902
COA: 271028
Monroe CC: 05-034540-FH

KIMBERLY ANN ARNONE,
Defendant-Appellant.

By order of March 30, 2007, the prosecuting attorney and the Attorney General were directed to answer the application for leave to appeal the August 7, 2006 order of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we GRANT the defendant's motion for extension of time to file reply, and we VACATE that portion of the sentence of the Monroe Circuit Court that ordered the defendant to pay attorney fees, and we REMAND this case to the trial court for a decision on attorney fees that considers the defendant's ability to pay now and in the future. See *People v Dunbar*, 264 Mich App 240, 252-256 (2004). At the trial court's discretion, the decision may be made based on the record without the need for a formal evidentiary hearing. If the court decides to order the defendant to pay attorney fees, it shall do so in a separate order, and not the judgment of sentence. *Id.* at 256; *People v Nowicki*, 213 Mich App 383, 386-388 (1995). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



s0613

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 20, 2007

Corbin R. Davis

Clerk